City of Harrisonburg, Virginia

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TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISIONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from Carmel Quinn Falls, Leon Nelson, and HGC, Inc. with representative Ed Blackwell of Blackwell Engineering for a special use permit per Section 10-3-48.4 (6) of the Zoning Ordinance to allow multiple family dwellings of up to 12 units per building within the R-3, Medium Density Residential District. The 2.039 +/- acre property is addressed as 2475 & 2477 Reservoir Street and identified as tax map parcel 81-A-8.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: July 9, 2014

Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Medium Density Mixed Residential. This designation states that these largely undeveloped areas continue the existing medium density character of adjacent areas, but in a different form. They are planned for small-lot single family detached and single family attached neighborhoods where green spaces are integral design features. Apartments could also be permitted under special circumstances. They should be planned communities that exhibit the same innovative features as described for the low density version of mixed residential development. The gross density of development in these areas should be in the range of 4 to 12 dwelling units per acre and commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

The following land uses are located on and adjacent to the property:

Site: Single-family dwelling, zoned R-3

North: Vacant parcels, zoned R-3

East: Campus View Condominiums and Apartments, zoned R-3 and R-5C

South: Single-family dwellings, zoned R-3

West: Across Reservoir Street, Dogwood Commons Apartments, zoned R-3

The applicant is requesting a special use permit per Section 10-3-48.4 (6) of the Zoning Ordinance to allow multiple-family dwellings within the R-3, Medium Density Residential District. The property is located in the southeastern portion of the City along Reservoir Street, approximately 550 feet north of the City/County boundary. Currently, there is a single-family dwelling on the subject property.

The proposed development is shown to contain three structures; two 12-unit apartment buildings and a 1,440+/- square foot clubhouse facility. The apartment buildings are described as three stories, with four bedrooms in each dwelling; for a total of 96 bedrooms. Parking is provided throughout the remainder of the property. The applicant has demonstrated that a TIA is not needed with this project.

Although addressed as Reservoir Street, the subject property has only a 15-foot wide pipe stem out to the street. The majority of the site is situated 100 feet back from Reservoir Street; with vacant parcels between the site and street. At this time there are no plans to connect the proposed development to Reservoir Street, and as shown on the drawing all traffic would be routed into the existing Campus View complex which connects with Chestnut Ridge Drive. The applicant has expressed a desire to have a temporary construction entrance off Reservoir Street during the construction phase for this project and Reservoir Street widening; as well as a possible future gated, emergency access into the site from Reservoir Street. This can be worked out during the comprehensive site plan review phase.

The applicant has noted on the submitted plan that the property line between the existing Campus View Apartments and the proposed new apartments would be vacated during the comprehensive site plan review process. When the interior property line is vacated to create one lot the orientation of the front, side, and rear setbacks changes as well. Staff has discussed with the applicant that the setbacks should all conform to the existing phases of Campus View. Additionally, a shared parking agreement would not be necessary once the property line is vacated.

Per Section 10-3-48.6 (b), vegetative screening would be required along the southern property boundary where the parking lot is adjacent to single-family dwellings. The submitted drawing indicates the location of the screening which must be an evergreen hedge (six-foot ultimate height) or shrubs/trees planted a minimum of five feet on center so as to form a dense screen. As well, all required parking lot landscaping must be met; this will be reviewed during the comprehensive site plan review.

As part of the requirements for obtaining a special use permit to build multi-family units in the R-3 district, an applicant must substantiate that they have met several conditions to justify the development. Briefly, the conditions state that:

Existing multiple-family development, or land planned for multiple-family development according to the Land Use Guide, is located adjacent to, across the street from or in close proximity to the proposed development.

The applicant has demonstrated that adequate vehicular, transit, pedestrian and bicycle facilities currently serve the site, are planned to serve the site according to a city or state plan, will be provided by the applicant at time of development, or are not needed because of the circumstances of the proposal.

The applicant has demonstrated that the proposed multiple-family development's design is compatible with adjacent existing and planned single-family, duplex and townhouse development;

The applicant has shown that the site is environmentally suitable for multiple-family development.

The applicant submitted a document to attempt to address these issues as numbered above; in general the applicant states that:

1. The proposed development is adjacent to Phases I and II of Campus View. The property line between Phase II and proposed Phase III will be abandoned during site plan development creating one unified parcel.

2. There are two entrances on Chestnut Ridge Drive serving the existing Campus View Complex that will serve this proposed Phase III. Sidewalks and bicycle facilities will be included with the site plan development. A connection to Reservoir Street is also being considered in discussions with the City.

However, actual construction of such a connection cannot be completed until the Reservoir Street widening project is completed.

3. Architectural design and landscaping will be similar to Campus View Phase I and II. In addition, screening shall be provided along the boundaries with two adjacent single-family detached home parcels.

4. The site has an average, existing grade, south-to-north slope of 8.4%. This slope is similar to or less than existing phases and there are no critical slopes.

Staff believes the proposed development meets the conditions set forth in Section 10-3-48.6 (e). Currently, there are apartment complexes along this portion of Reservoir Street as well as adjoining the site. Transit bus stops are located on Reservoir Street and Chestnut Ridge Drive adjacent to the development and pedestrian/bicycle facilities are planned for the widening of Reservoir Street. The gross density of the development is twelve units per acre, which does fall within the range of 4 to 12 dwelling units per acre suggested in the Medium Density Mixed Residential land use.

Staff does not have concerns with this proposed development and recommends in favor of the special use permit request.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she opened the public hearing and asked if the applicant or the applicant's representative would like to come forward and speak.

Dick Blackwell with Blackwell Engineering, said he there to answer questions regarding the project. We have talked with the Public Works Department about the use of the entrance off of Reservoir Street, just for construction purposes. The City owns and is planning on using the two lots on either side of the entrance as staging lots while the work on Reservoir is going on. They will probably use the same construction entrance to access those lots as our project will. When complete we do want to have the capability of using that entrance for emergency purposes; it would be gated in some fashion.

If there are any questions I would be happy to answer them; as well, the owner is here with me tonight.

Chair Fitzgerald asked if there was anyone wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak against the request.

Steve Bender said I am the Treasurer of the Campus View Condominium Unit Owners Association. Campus View JMU borders the property in question. It is our understanding that the applicant plans to sell the land, once the special use permit is obtained, to Davis Mill, LLC, the current owner of the property commonly known as Campus View Apartments. The subject parcel abuts both their property and ours. There are several problems with their application that we would like to correct for the record.

First, the application still fails to list all adjacent owners, and incorrectly lists Davis Mill as an owner of Parcel 081-E-1. Until 2012, E-1 represented the entire parcel that was to be Campus View JMU Condominium. In 2012, when Davis Mill bought the 7 acres of additional land not yet added to the condominium, 081-E-1 ceased to exist in the Harrisonburg Real Estate Information System (REIS) and the additional land was designated 081-E-7. Within the last month, 081-E-1 was added back into the REIS, but once the parcel is selected, pages related to that parcel will not properly display any information—just "error on page" warnings. All it lists is Campus View JMU Condominium Unit Owners Association Inc. Incidentally, this, too, is an error as the Association does not own the land. Each of the 59 condominium units own an undivided interest in the property and each of those unit owners should be listed among the adjacent owners. We appreciate the effort that went in to notifying

our members, but for many of them, the mailing address of record is the condominium unit, and with most students now home, it is likely that they never received their notices.

The apartment complex was originally planned to be additional units in the Campus View JMU Condominiums, but due to the Declarant abandoning its project construction schedule, the construction begun in 2008 was never finished and the later phases of our condominium complex were never even begun, resulting in a 168 unit condominium being reduced to only 59 units. Without complying with the law requiring that the existing unit owners be notified, the Declarant amended the declaration and sold off all additional land to Davis Mill along with the 12 unconstructed units, which were then built by Davis Mill while building the apartments.

Second, the letter from Blackwell Engineering answering staff questions about Sec. 10-3-48.6 (e) contains errors. In item (1) it refers to Phases I and II of Campus View Apartments. We are not aware that Campus View Apartments was built in two phases. Staff has advised us that their understanding is that Phase I refers to the Condos. We want to clarify that if that was their intent, it is wrong. Page 4 of the attachment identifies the building, but the Phase Lines are from the original Declaration. In actuality, Building 2, 4, & 5 constituted Phase I of the Condominiums, built in 2008. Buildings 3 and 6 were added as Phase II to the ownership table in May 2009, even though Building 3 did not physically exist beyond the slab until 2013. Pages 6-8 show the progressive development. The amended declaration identified each planned additional building as a separate legal and real property entities and should not be lumped together in this manner. At best, it should be described as an arranged marriage.

In Item (2) the letter states that there are two entrances on Chestnut Ridge Drive serving the existing Campus View Apartments. This is technically true, but very misleading. The south entrance closest to Reservoir is the Condominium entrance. Under a use easement entered into by the Declarant, Campus View Apartments were given the right to use the roads. However, this agreement would not extend automatically to the subject property. Residents of those units would not have access to the Condominium streets without an additional agreement.

Davis Mill has indicated that they may want to include the planned additional units in their current easement agreement with us. This easement goes well beyond the roads. It includes parking access, stormwater facilities and sediment pond, and our recreational amenities. It also requires them to pay a monthly fee for this service and a one-time per unit capital fee once certificates of occupancy are received. While it may be possible to add the subject property to this agreement, until that occurs the new units are not entitled to the same rights as the other units, including road use. The Condominium would have no way to distinguish between tenants with and without access rights. If you refer to Page 5, you can see the two alternatives for the subject property to ingress and egress. Those residents would in all likelihood use our roads and recreational amenities without our permission, leaving us with no way to enforce our rights and effectively putting us in the position of giving it away for free if we cannot agree to extend the agreement to the additional units.

Please understand that the Condominium project has been a nightmare for our owners for the last six years. We have faced liens from unpaid subcontractors, our clubhouse was placed in receivership because the City did not properly record it as a common element and the Declarant has failed to pay more than $125, 000 in assessments against units under his control. The bond company holding the Declarant assessment bond denied payment, and we have been forced to bring suit to recover our assessments. Additionally, despite the fact that they never finished the parking lot, the Declarant certified to the State, as far back as 2008, that all common elements were complete.

Last year we spent $31,000, simply to make the roads passable where they had sunk as much as nine inches. At the time of the 2012 sale to Davis Mill, the two parties escrowed only $56,000, to be

released to the Declarant only upon completion of the lot. It should have been clear that $56,000 was not nearly enough and we strongly suspect that the Declarant never intended to complete the lot. Davis Mill has notified us and the Declarant that if the lot is not completed by the 17th of next, month, then the money will pass to Davis Mill and they would not be required to finish the lot. Completion costs would fall to the owners, who were entitled to and have already paid for a completed lot by virtue of their sales agreements and the provisions of the Condominium Act.

It is our understanding from counsel that since the City will not permit access from Reservoir Street, the special use permit should be denied, since the residents of the proposed units would have no access to public roads and are not, by right, entitled to access over our properties. While the stated intent to erase the lot line between the current Apartment parcel and the subject property would partially address that issue, it would not protect our rights. As I said earlier, the most direct access is through our development.

Given the current condition of the roads, resulting both from substandard construction and from excessive wear and tear of the Apartment construction vehicles, we have concerns over the ability of fire and emergency vehicles to navigate some of the roads to access these new units. We also have concerns that occupants of the units to be built under the special use permit could potentially bring suit against the Condominium Owner's Association for damage to vehicles, even if using the roads without permission. Pages 9-16 of the handout contain photos and Google Earth images of the condition of the parking lot.

Although we believe we are nearing settlement with the Declarant and other defendants, the two developers involved in the negotiations have dragged settlement discussions out for nearly six months with continual questions and changes to the language of the agreement. Even if the agreement is reached, it will be far less than satisfactory, with the owners receiving none of the unpaid assessments, no attorney fees, and only a small part of the amount necessary to complete the roads and parking areas.

Additionally, Davis Mill is avoiding, as part of the settlement agreement, responsibility for 8 months of assessments on their 12 condo units that they built on the slab. Also, they have yet to deliver occupancy permits, or the $160 initial capital payment they were required to pay as part of their agreement related to their previous purchase.

We were told that it is the prerogative of the Planning Commission to place conditions on a special use permit request; one of which would be that you could require that the applicant guarantee that the roads are complete, by paying for the completion of the project. In talking with our attorney today, she informed us that is only if the applicant has the right to use the road; therefore, the Planning Commission cannot make the applicants enter into an agreement with the Condominium Owners to get the roads complete. We understand that you cannot make the applicant enter into an easement agreement with us, or force the applicants to pay for the completion of roads; but, according to our attorney you could require them to place a barricade to insure that our road is not used by those 24 units. If a gate or barricade existed, that allowed access by only those units that currently exist there now it would be the only way to protect our rights from people using our roads without permission to do so. We would like to make certain that before this is approved there are protections in place for the Condominium Owners from the new units using our roads without having the right to do so.

Chair Fitzgerald asked the developer if he would like to speak now regarding the comments.

Mr. Guy Blunden, 407 South Cherry Street, Richmond, VA, said he is the largest owner in the Home Owners Association for the Condominium Owners. What I heard of importance from Mr. Bender is that there would be the ability of people in the two new units to travel through the land that is owned by

the HOA. It is true, the 108 existing units we have, have an easement. We have cross easements for parking and access between the apartments and the HOA. It is true that people from the new units could go across the HOA property; but, they do not have to. We have our own roads and entrance on the apartment property.

I think to recommend denial of this application because the people that would live in the buildings might drive across someone else's property is a bit preemptive. I would be very happy to instruct the people in those units not to use the HOA property. We would like to enter into an agreement with the HOA to extend the cross easements to the two new buildings. I think there are some people on the HOA who would like to force us to do so in order to construct the new buildings because it would put the HOA in a very strong position. We would not like for that to happen; especially since we have a perfectly legal and accessible entrance for the new buildings.

I would be happy to answer any questions you may have of me.

Mr. Way asked what is the possibility for placing signage around that area to let people know.

Mr. Blunden said it is very, very possible. I think it would be bit silly to say "persons in building such and such do not use this exit/entrance;" but it is perfectly possible. I do not think people in the HOA are telling guests not to use their entrance; so it seems a bit of a stretch to say the persons in the new buildings would ruin their roads.

Mr. Heatwole said one suggestion would be to put a construction entrance sign at the preferred entrance.

Mr. Blunden agreed and said I am absolutely in favor of all trucks using the apartment entrance/exit. That has been my intent all along.

Mr. Colman asked if there was a current access easement for the new units to drive across the apartment property.

Mr. Blunden said that would be me giving myself an easement and it should not be needed if subdivided.

Chair Fitzgerald asked if there was anyone else wishing to speak regarding the request.

Mr. Bender said let me just clarify that we do not really have objections to the buildings being built, our concern is that once they are in we want to see to it that certain things are dealt with properly. To date, dealing with our developer has been a nightmare, dealing with Davis Mills has at times been tedious, and I suspect that we can get the easements in place for the additional 24-units. My thinking behind asking for the condition, before our attorney said we could not ask for such, would be that those cross easements be in place before approval of the special use. Our attorney said the one restriction you could put in would be to ask for the gate, and obviously, the cost of the gate would be so much more than just going into an easement agreement.

Chair Fitzgerald asked if there was anyone else wishing to speak regarding the request. Hearing no one, she closed the public hearing and asked for discussion or a motion from Planning Commission.

Mr. Way moved to recommend approval of the special use permit request.

Mr. Heatwole said is there a way to put a condition or to recommend that clear direction (signage) is at the road frontage to direct construction traffic so as not to impede on the HOA property. I do not know if we can recommend that; but, I just want it to be on record that we suggest it.

Mr. Fletcher asked if the suggested condition could be repeated.

Mr. Heatwole said is there any language that we could add to the SUP requesting that the applicant place clear directions as to where the construction entrance is located.

Mr. Fletcher said are you essentially saying construction vehicles cannot enter onto the condominium property.

Mr. Heatwole replied yes.

Mr. Fletcher said a condition could be added to the SUP, but it is somewhat redundant since they do not own the property and they should not be driving across it any way. I see no reason why you cannot make it a condition of the SUP.

Mr. Heatwole said even if it is not a condition of the SUP, I just wanted it to be part of the record.

Mrs. Turner said my concern of making it a condition would be that we would have a hard time enforcing that as a zoning requirement. Also, who would we be taking to court for a Class 1 Misdemeanor for that? Would we be taking the developer of the apartments, the construction company, or the driver of the vehicle? I really do not know how we would enforce that. I appreciate the sentiment and maybe it could be a suggestion rather than a condition.

Mr. Heatwole agreed and seconded the motion to recommend approval.

Mr. Colman said he would like to mention that the use of gates or fencing could possibly block parking and the Fire Department may have issues with gating the area between the apartments and condominiums.

Mr. Baugh said if they choose to put up some type of gate, they would be required to work with the Fire Department on that. We recently approved an ordinance to make certain that if an access gate is in place the emergency services personnel are aware of it.

Chair Fitzgerald if there were any further questions or are we ready to vote. Hearing nothing, she called for a voice vote on the motion.

All voted in favor of the motion to recommend approval (5-0).

Chair Fitzgerald said the special use permit request will go before City Council on August 12th with a favorable recommendation.

Respectfully Submitted,

Alison Banks
Senior Planner